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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/646,850

08/22/2003

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E40.2B-11123-US01

1502

490 7590 03/08/2011
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EXAMINER

DAYE, CHELCIE L

ART UNIT

PAPER NUMBER

2161

MAIL DATE

DELIVERY MODE

03/08/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,850

Applicant(s)

MELLENTHIN ET AL.

Examiner

CHELCIE DAYE

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/16/11.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23,27,29,30 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23,27,29,30 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is issued in response to applicant's amendment filed February 16, 2011.
2. Claims 23-24, 27, 29-30, 34-39 are presented. No claim added and claims 1-22, 24-26, 28, 31-33, and 37-39 are cancelled.
3. Claims 23, 27, 29-30, and 34-36 are pending.
4. Applicant's arguments filed February 16, 2011, have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 23, 29, 30, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brand (US Patent Application No. 2003/0183226) in view of "Pipetman - Care and Maintenance", published 2001, referred to hereinafter as 'Pipetman'.**

Regarding Claim 23, Brand discloses a method for handling data of a proportioning device for the dosing of liquids, comprising the steps of:

providing the proportioning device for the dosing of liquids ([0002], Brand), in a production process ([0003-0004], Brand), with at least one transponder for contactlessly storing data using a writing device and from which data can be contactlessly read using a reading device ([0054-0055], Brand)¹, the proportioning device being of a portable or stationary design and selected from the group consisting of manually operated pipettes, motor-operated pipettes, manually operated dispensers, and motor-operated dispensers, the proportioning device for the dosing of liquids ([0002] and [0097], Brand),

storing production-related data about the proportioning device, in the production process, into the transponder using the writing device ([0016-0017]; [0030], Brand),

during use of the proportioning device, storing application-related data about the proportioning device in the transponder using the writing device ([0026];[0030];[0096], Brand),

during use of the proportioning device or during maintenance or repair of the proportioning device, fully or partially reading out the stored production related data and the application related data using the reading device ([0018];[0130-0131], Brand),

wherein the application-related specific data stored into the transponder is fully or partially variable ([0084], Brand).

¹ Examiner Notes: The data is wirelessly transferable between the transceivers (see [0032]), therefore contactlessly. Also, the reader corresponds to both the writing device and the reading device (see [0132]).

While Brand discloses storing application-related specific data into the transponder. Brand is not as detailed with the data being maintenance and/or repair data.

On the other hand, Pipetman discloses the stored data being maintenance and/or repair data (pgs.1-16, Pipetman). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Pipetman's teachings into the Brand system. A skilled artisan would have been motivated to combine in order to allow the device to maintain valuable information, thus permitting ease of use by the holder.

Regarding Claim 29, the combination of Brand in view of Pipetman, disclose the method wherein the repair data describes a defect (pg.3, Pipetman).

Regarding Claim 30, the combination of Brand in view of Pipetman, disclose the method wherein the repair data describes a component which has been changed (pg.3, Pipetman).

Regarding Claim 34, the combination of Brand in view of Pipetman, disclose the method wherein the proportioning device is provided with a passive transponder ([0054-0055], Brand).

Regarding Claim 35, the combination of Brand in view of Pipetman, disclose the method wherein at a beginning stage of assembling the proportioning device, a product component is provided with the transponder ([0003] and [0008], Brand).

Regarding Claim 36, the combination of Brand in view of Pipetman, disclose the method wherein the transponder is encapsulated in the proportioning device ([0046-0050], Brand).

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brand (US Patent Application No. 2003/0183226) in view of "Pipetman - Care and Maintenance", published 2001, referred to hereinafter as 'Pipetman', further in view of Boldt (US Patent No. 5,328,597).

Regarding Claim 27, the combination of Brand in view of Pipetman, disclose the method wherein calibration data is stored as either production-related specific data or application-related specific data (pgs.1-16, Pipetman). However, Pipetman is not as detailed with respect to the stored data being a date of next calibration.

On the other hand, Boldt discloses the stored data being a data of the next calibration (col.11, lines 2-9 and 18-40, Boldt). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Boldt's teachings into the Brand and Pipetman system. A skilled artisan would have

been motivated to combine in order to allow for a flexible device which informs the consumer of the status of the device.

Response to Arguments

Applicant argues, Brand does not suggest storing application-related data related to the proportioning device.

Examiner respectfully disagrees. To begin, the applicant's specification gives an example of "application-related data" being usage data, which is data concerning the proportioned fluids (see par [0029] and [0054] of instant application). With that being said, Brand discusses data being stored in a database memory that is downloaded to any transceiver, wherein a usage of the device is built up in the memory (par [0026]) and the memory a dose memory for storing dosage data (par [0096]). Examiner interprets those citations to correspond to the storage of the application-related data, which is related to a proportioning device (par [0002]). Thus, Brand does in fact teach the above argued feature.

Applicant argues, there is nothing within Pipetman that discloses data about maintenance or repairing the pipettes having to be recorded; much less any hint by Pipetman to store such data in a transponder.

Examiner respectfully disagrees. To begin, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

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See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed.Cir.1986). In particular, Pipetman was relied upon for the disclosure of an example of application-related data being maintenance and/or repair data. The examiner believes Pipetman teaches this feature throughout its reference (pgs. 1-16), along with the fact that Pipetman is centered around pipettes and their performance and reliability.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Points of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHELCIE DAYE whose telephone number is (571) 272-3891. The examiner can normally be reached on M-F, 7:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on 571-272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chelcie Daye
Patent Examiner
Technology Center 2100
March 2, 2011

/Apu M Mofiz/
Supervisory Patent Examiner, Art Unit 2161